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Rural Water System Easements



**Cooperative Extension Service
South Dakota State University
U. S. Department of Agriculture**

Rural Water System Easements

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What It Is

An **easement** is a perpetual, non-profitable right granted by a landowner to another party for a specific limited use of a particular piece of property.

An easement must be obtained on all land where a waterline is to be installed; if not, the water system could be held liable for damages to the land and crops. Furthermore, the system would not have the right to enter and maintain the waterlines and could be forced to remove them.

The lands needed for wells, pumping stations, water towers, and underground storage reservoirs are usually purchased outright.

Obtaining an Easement

It would involve less work if all easements could be obtained at the same time that hookup fees are collected and water users agreements signed. This is not always practical from a timing standpoint; hookup fees and signed water-user agreements must be secured prior to the final engineering design, and the exact location needed for the easement is not known until the final design is completed.

Some systems have secured a large number of easement signatures at the same time that members paid their hookup fees. Everything except the legal description of the land was filled in ahead of time and each landowner was advised that this description would be added later. **The landowner would need to consent, in advance, to this "blanket type" easement.** It is important that this be understood.

Another alternative used is incorporating a blanket easement as a part of the Application for Service (membership) document. However, this alternative could, and no doubt would, add to the cost of recording the easement and subsequent abstracting because of additional words in the recorded document.

Both alternatives eliminate time and work by combining operations. However, in both cases, waterline easements are still needed from landowners who are not members of a rural water system.

Major Steps in Securing an Easement

1. Searching the records to determine ownership—The owner(s) of a particular piece of property where an easement is desired is normally determined by searching the records at the County Register of Deeds Office. Abstractors and attorneys have the skill and experience necessary to make a proper search, although others with sufficient training have researched land records properly.

The tremendous amount of time involved in determining land ownership accurately for a large number of land parcels is not appreciated until it's been done. It should be noted that Farmers Home Administration, the primary lender thus far, has been willing to accept a less sophisticated and less costly title search than would be required in a transfer of land ownership.

Several things must be checked carefully. For example, a man or wife may be a sole owner or they may be joint owners, and this legal ownership may vary within separate parcels of property they own. During probate, estates may not have been settled requiring the signature of the guardian, administrator or executor, while after settlement the property may have numerous owners with an interest, thus requiring many signatures.

When property is being sold through a Contract for Deed, both the seller and purchaser are considered owners. Contracts for Deed are recorded along with the main property deed records or under real estate mortgages. When the Contract for Deed has not been recorded the purchaser does not show in the records as the legal owner.

2. Preparing a proper easement — Suitable easement forms can be obtained through an attorney or from the Farmers Home Administration, if FHA is the lender.

The names of the grantors (owners) should be listed exactly as obtained in the title search. The parcel of land over, across and through which the easement is granted must be described in detail unless a "blanket-type" easement is obtained. Some landowners may demand that the land described be only that strip of their land parcel along the pipeline route; that is, specifying the S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16 rather than just the SW $\frac{1}{4}$ of Section 16 if they owned the entire quarter section.

Next the easement width and location must be described. A twenty to thirty foot width appears to be sufficient to allow for the proper installation, inspection, repair, replacement and/or the removal of an underground water pipeline. Provisions should be made in the easement for the right of ingress and egress over adjacent lands to get to the easement.

A **double** description of the easement location as follows can avoid some problems: "Fifteen (15) feet either side of the centerline of the pipeline **as constructed**. Also described: as thirty (30) foot easement with the centerline being approximately fifteen (15) feet inside the fence line where physically practical."

By describing the easement as fifteen feet either side of the pipeline **as constructed**, the contractor can move around major physical obstacles such as large boulders, deep gullies or sloughs. By describing the location as 30 feet inside the fence line **where practical**, the landowner's reluctance to sign the easement because of fear that the pipeline could meander through his land (and crops) is minimized. In the description above the term "public right-of-way line" would be a good substitute for "fence line" where applicable because it is more easily established and more permanent.

3. Obtaining the grantor's (owner's) signature—The signatures obtained should correspond exactly with the owners' names listed on the easement form. These signatures must be dated and notarized. An easement that isn't notarized

cannot be recorded, and it would not be effective when the owner died or sold the land.

There will be problems obtaining signatures from some landowners. Easements will be needed from some uninterested landowners who are not members of the system. Signatures of absentee landlords will need to be obtained by mail. There may be cases where a tenant paid the hookup fee and signed the water users agreement but the landlord will need to sign the easement.

In developing the best means of obtaining the needed signatures so as not to delay project construction, proper educational work and the experience gained in securing hookup fees and water users agreement signatures are valuable. A well-publicized group meeting or series of localized meetings for explaining the easements and obtaining signatures is a good starting point.

For signatures not obtained at group meetings, a personal contact should be made. It is better for a director or another member who knows the landowner to make this contact. Many persons who are unwilling to sign for someone, such as an attorney they don't know, will readily sign for a neighbor they know and respect. Even for absentee landlords, contact from someone who knows them is helpful. Tenants who are members can assist in getting their landlords signatures.

Provision must be made for getting the signatures properly notarized. Legally, the signature is supposed to be notarized at the time of execution. If the person getting the signature is not a notary he should have one along or become one himself. Qualifying as a notary takes about three weeks and costs about \$30.

4. Recording the easement—Once the easements are recorded they become a permanent part of the land record.

It may be wise, however, for the system's officials to hold the signed easements until the project installation is completed. During construction, it may turn out that a particular easement is not necessary or the described location of the easement may need to be altered because of unforeseen construction difficulties or last-minute changes in the final plans. By delaying the

recording of the easements at the County Register of Deeds these alterations can be taken care of. The recording of easements should not be delayed, however, for lands undergoing transfer of ownership.

Other Common Questions

What consideration must be paid for the easements? Although landowners are asked to provide free easements, a one-dollar consideration is usually paid to make them binding. If the burden of paying for right-of-way easements and for crop damages was added to rural water system costs, many systems would not be as feasible. The governing body may face the question of payment for crop damages that occur to driveways, lawns and shrubs in the installation of service lines. These problems can be minimized by proper timing, judicious selection of crops planted in the easement area and by utilization of proper construction techniques both during and after installation of the water lines.

How should service line easements be handled? For most earlier rural water systems, each member was responsible for installing and maintaining his own service line. Many systems developing in South Dakota have elected to install the service lines as a part of the project cost and responsibility and thus, service line easements should be secured.

In these systems service line easements can be included as a part of the water users agreement. However unless water users agreements are recorded, they do not become a part of the land record. Some of these agreements are with tenants, rather than the landowners. By specifically including an easement for service lines as a part of the main water pipeline easement, these problems would be avoided.

What misconceptions develop and how can they be stopped? Sometimes landowners develop the misconception that granting an easement places a major encumbrance on their entire tract of land and could result in heavy damages to their land. An important thing to remember is that by conducting an aggressive informational program, most rumors can be countered before they start.

Several facts, for example, would counter the misconceptions noted above: (1) an easement grants only one

entity (the rural water system board) the right to do one limited thing (install and maintain an underground water pipeline), (2) most properties already have a similar easement for an electrical or gas line, (3) the board members are local landowners and would not jeopardize property values in their area, (4) the easement defines a specific location where the pipeline will be installed, if physically possible, and (5) it would be impractical to run a waterline indiscriminately through a property.

What can be done in locations where the landowner's will not sign a waterline easement? When rural water systems are organized as non-profit corporations, they have no power of eminent domain (the right of government to take with just compensation). If members refuse to grant an easement, water system officials can elect to return their memberships. When easements can't be obtained from landowners, the waterlines can be installed in the road ditches if proper easements have been secured from local governing bodies in advance.

There may be a few areas, however, where road ditches are not suitable because they are too wet or too narrow for the contractor's pipe installation equipment. This forces the contractor to use another more costly installation method and some extra cost will be involved.

Water User Districts have the power of eminent domain.

How should road and railroad easements be obtained? It is wise for water system organizers to approach township boards and county commissioners early in the project development and ask for permission to install water lines in the road ditches when necessary. Before construction begins on a system, these boards need to take official action granting an easement for the system to install water lines in roadway ditches and to cross roadways under their jurisdiction when necessary, and each of these boards needs to sign one "blanket easement" to that effect.

For state highway and railroad crossings, similar official action and signed easements are needed. The engineers and attorneys may need to assist in obtaining these easements.

What is involved in crossing a prior easement? In locations where waterlines

will cross electric, gas or other utility easement areas, a working arrangement will need to be developed so that the "senior" easement facility is not damaged

during construction. The project engineer normally assumes responsibility for those arrangements.

RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That in consideration of One Dollar (\$1.00) and other good and valuable consideration paid to

John R. Doe and Mary Doe xxx husband and wife

hereinafter referred to as GRANTOR, by X Rural Water System, Inc., hereinafter referred to as GRANTEE, the receipt of which is hereby acknowledged, the GRANTOR does hereby grant, bargain, sell, transfer, and convey unto the GRANTEE, its successor and assigns, a perpetual easement with the right to erect, construct, install, and lay, and thereafter use, operate, inspect, repair, maintain, replace, and remove

An underground pipeline, service lines, connections, valves and all other devices used in connection with the operation of a rural water system

over, across, and through the land of the GRANTOR situate in Y County, State of South Dakota, said land being described as follows:

The east half of the southeast quarter (E½SE¼) of Section 16, Township 50, Range 50

together with the right of ingress and egress over the adjacent lands of the GRANTOR, his successors and assigns, for the purposes of this easement.

The easement shall be thirty (30) feet in width, the center line of which is described as follows:

Fifteen (15) feet either side of the centerline of the pipeline as constructed; also described as a thirty (30) foot easement with the centerline being approximately fifteen (15) feet inside the fence line where physically practical.

The consideration hereinabove recited shall constitute payment in full for any damages to the land of the GRANTOR, his successors and assigns, by reason of the installation, operation, and maintenance of the structures or improvements referred to herein. The GRANTEE covenants to maintain the easement in good repair so that no unreasonable damage will result from its use to the adjacent land of the GRANTOR, his successors and assigns.

The grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the GRANTEE, its successors and assigns.

IN WITNESS WHEREOF, the GRANTORS have executed this instrument this 3rd day of December 19 73.

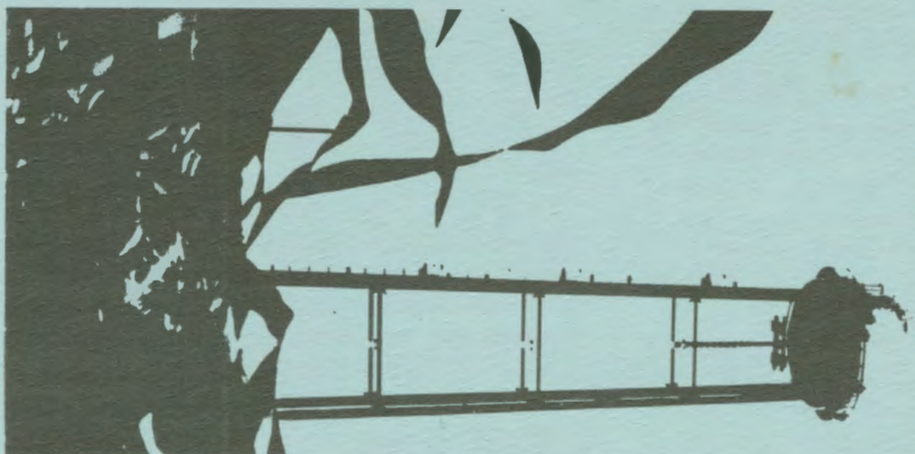
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